LOWELL J. SIMONS

IBLA 82-1252 Decided January 14, 1983

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer, M 50364 (ND) Acq.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Noncompetitive Leases

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in an oil and gas lease which terminated. Such lands are available for subsequent leasing only in accordance with the provisions of the simultaneous filing system provided under 43 CFR 3112.

APPEARANCES: Lowell J. Simons, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Lowell J. Simons has appealed the decision of the Montana State Office, Bureau of Land Management (BLM), dated July 28, 1982, rejecting his noncompetitive oil and gas lease offer, M 50364 (ND) Acq., for the SW 1/4 sec. 17, T. 135 N., R. 103 W., fifth principal meridian, because the lands may only be leased by simultaneous procedures.

The BLM decision explained the rejection as follows:

> Regulation 43 CFR 3112.1-1 requires lands in leases which expired, were cancelled, were relinquished, or which terminated are subject to simultaneous filings only. The lands in your offer were included in lease MONTANA 067119 (ND) ACQ. which issued effective November 1, 1964. The lease terminated November 1, 1971. The lands in the lease were listed for simultaneous filings in December 1975. However, the lands included in your offer were not listed. The records had been noted in accordance with a title opinion which was incorrect.

> The acquisition file has again been checked by our Solicitor and it has been determined that the United States does, in fact, own the oil and gas on the SW 1/4 of Section 17. Our title records have been noted accordingly.

In his statement of reasons, appellant indicates that he discussed the simultaneous leasing requirement of 43 CFR 3112.1-1 with BLM and learned that its purpose was to prevent the filing of over-the-counter applications in anticipation of a lease termination or upon lease termination by a multitude of persons hoping to gain first priority to obtain a lease for the same lands. He argues, however, that strict application of the regulation to his offer is inappropriate and unjust. He reports that he brought the notation error referred to in BLM's decision to BLM's attention after spending considerable time, effort, and money researching local as well as BLM records. He points out that as a result of the error no revenue has been obtained by the Government for the land and that none would have been collected in the future but for his efforts. He contends that failure to award this lease to him will discourage others from seeking out errors and that this would further diminish Government revenues in contravention of what he believes is the intent of the statutes and regulations to promote leasing. He concludes that 43 CFR 3112.1-1 does not contemplate the circumstances of this case and therefore should not be applied. He suggests that it would be more consistent with the statutory and regulatory scheme to treat parcels such as the SW 1/4 sec. 17 as though they had been newly reacquired.

[1] Departmental regulation 43 CFR 3112.1-1 states that

> [a]ll lands which are not within a known geological structure of a producing oil or gas field and are covered by canceled or relinquished leases, leases which automatically terminate for non-payment of rental pursuant to 30 U.S.C. 188, or leases which expire by operation of law at the end of their primary or extended terms are subject to leasing only in accordance with [Subpart 3112 -- Simultaneous Filings] * * *. [Emphasis added.]

The language of the regulation does not permit exceptions and the requirement of simultaneous leasing has been consistently applied. James W. Phillips, 61 IBLA 294 (1982); Charles H. Whitlock, 57 IBLA 252 (1981); David A. Provinse, 50 IBLA 271 (1980). The circumstances and arguments in this case are similar to those in David A. Provinse, supra, where BLM had canceled a lease because it believed the United States did not hold the mineral interests in the lands, appellant subsequently showed that the United States did own the minerals, but we held that the lands could only be leased by simultaneous procedures and that appellant's over-the-counter offer was properly rejected. As in the Provinse case, even though the equities are with appellant and we recognize that the mineral interests are now available for leasing solely because of appellant's efforts, we must affirm BLM's rejection of appellant's over-the-counter offer. See David A. Provinse, supra at 275-76 (Stuebing, A.J., concurring specially). Since the SW 1/4 of sec. 17 was included in lease M-67119 (ND) Acq. that terminated November 1, 1971, the lands may only be leased under simultaneous procedures.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is affirmed.

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Will A. Irwin
Administrative Judge

We concur:

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Anne Poindexter Lewis
Administrative Judge

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Gail M. Frazier
Administrative Judge